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Current Topics.

Rehabilitation of Discharged Prisoners.

IN a notable speech at the annual meeting of the Royal London Discharged Prisoners' Aid Society, the Recorder of London, Sir GERALD DODSON, observed that civilisation had always been compelled to punish wrongdoers. Formerly they were put into dungeons. Nowadays, said the Recorder, there was a gentle and efficient Keeper at the Central Criminal Court. That office was one of profit in days gone by, when Newgate prisoners were kept in chains. Nowadays there was mercy and the probation officer. The Home Office, Sir GERALD said, should introduce something like the probation system of the Old Bailey into prisons. It would be helpful if every prison had not one but many probation officers, he said. The learned Recorder illustrated how the probation officer could assist in the rehabilitation of discharged prisoners by a cogent example drawn from actual experience, of a man discharged from prison with the usual 5s., who forthwith spent the money in a public-house, and on that very night broke into a shop. This should not have happened if there had been a probation officer to take him by the hand. Sixty discharged prisoners were still corresponding with the probation officer at the Central Criminal Court. All who have had experience of the criminal courts will heartily endorse Sir GERALD'S opinion of the value of the probation system, not only in rehabilitation of discharged prisoners, but in preventing young people from taking the wrong path. Its extension in the past has done much to prevent our gaols from becoming overcrowded, and its greater extension in the future may well further a desirable thinning down of the prison population. It is interesting to learn from Mr. C. A. WILLIS, the Chairman of the Council, that of the 787 young persons discharged during the year the society aided 682: the remainder, it could be assumed, went to the services. Of the total number of approximately 6,000 discharged prisoners, 5,000 were helped. It is even more interesting to learn that all this good work was done for a total expenditure of £8,112, the total income of the society being £8,193. Cash grants amounted to £3,131.

Adoption of Children.

BY the Adoption Society (Provisional) Regulations, 1939, made on 15th March in pursuance of powers conferred by s. 4 of the Adoption of Children (Regulation) Act, 1939, a full form of application for registration of an adoption society is laid down as well as a form of memorandum provided by the society to any parent or guardian proposing to place a child at its disposition with a view to adoption and a form of certificate by the parent or guardian that he has read and understood the memorandum. The memorandum sets out briefly the legal consequences and implications of adoption. In the case of a child proposed to be delivered by a society to an adopter, the regulations lay down what inquiries and reports must first be made, and that a case committee must consider the case, after interviewing the proposed adoptee and inspecting his premises through their representative. The regulations also provide for annual accounts and reports, as well as for the visiting of children. In a circular dated 18th March and addressed to clerks of county and county borough councils it was stated that an Order in Council had been made appointing 1st June, 1943, as the date on which, under the Postponement of Enactments (Miscellaneous Provisions) Act, 1939, the Adoption of Children (Regulation) Act, 1939, is to come into operation. The circular explains that on and after 1st June it will be an offence against s. 1 for any body of persons (other than a local authority) to make any arrangements for the adoption of a child, unless that body is an adoption society registered by the council of the county or county borough of the area within which its administrative centre is situated. The Secretary of State trusts that county and county borough councils will make every effort to reach a decision before the 1st June on every application which has been promptly submitted by an existing society. The grounds on which registration can be refused (or cancelled) are stated in s. 2 of the Act, and the Secretary of State would be obliged if he could be furnished early in June with a list of any societies which may apply to the council for registration, showing whether the application has been granted or refused. With regard to the requirement in the regulations that a registered adoption society should appoint a case committee, the Departmental Committee which reported in 1937 emphasised the desirability of including in such committees married women with children of their own, and persons experienced in social work and acquainted with the various public and voluntary social services for children, and the Secretary of State trusts that registration authorities will direct the attention of adoption societies to the importance of this point. It will still be open to individuals to make arrangements for adoptions, but under s. 7 of the Act, if a third party participates in arrangements for placing a child under nine in the care and possession of a person who is not the child's parent or guardian or a near relative and who undertakes the maintenance of the child without reward, the third party must give notice to the welfare authority, and provisions will apply similar to those which apply under the Public Health Act, 1936, when the maintenance of a child is undertaken for reward. The attention of welfare authorities is being drawn to this section by the Minister of Health, and where they are not also registration authorities, they are being asked to report to the registration authority any case which may come to their notice in which it may appear that arrangements for adoption are being made by a body of persons. It is for the registration authority to enforce s. 10, dealing with the publication of advertisements, with a view to adoption. Welfare authorities are being asked to report to the registration authority any advertisements contravening this section which may come to their notice.

Agreements between English and Scottish Solicitors.

A USEFUL note in the March issue of *The Law Society's Gazette* deals with agency allowances between Scottish and English solicitors. The note refers to s. 37 of the Administration of Justice (Scotland) Act, 1933, and s. 41 of the Solicitors (Scotland) Act, 1933, and to a statement in the *Scottish Law Gazette* for June, 1942, that failure on the part of a Scottish solicitor to comply with them might amount to professional misconduct. The sections deal with the conditions under which agreements between solicitors acting for the same client to share fees and profits shall be lawful. The Council of The Law Society states that it expressed the view in *Opinion* 1861 in "The Law Society's Digest," 1937, that it is not illegal or contrary to professional etiquette for an arrangement to be made under which an English solicitor takes some interest in the profits of business introduced or entrusted by him to a Scottish solicitor who does the work necessary to be done in his own country, but in the absence of the client's consent to the English solicitor retaining the profit allowed to him under any such arrangement for his own benefit, he may have to account for it to the client. The Council states that it does not consider that its earlier opinion is affected by s. 37 of the Administration of Justice (Scotland) Act, 1933, especially as the section would not apply to an arrangement between a Scottish solicitor and an English solicitor, having regard to the definition of "solicitor" in the Scottish Acts. It is important, however, the Council feels, that English solicitors who employ or act for Scottish solicitors should have the Scottish provisions in mind.

Applications for Distress Warrants for Rates.

THE Courts (Emergency Powers) Act, 1939, s. 1 (2), provides (*inter alia*) that a person shall not be entitled, without the leave of the appropriate court, to proceed to exercise any remedy which is available to him by way of the levying of distress. In the piping days of peace, justices could not delay execution of a distress warrant for rates in order to give a debtor time to pay,

but this subsection enables them to do so. In an article in the *Local Government Chronicle* for 6th March the writer notes that magistrates have power now to adjudicate and decide upon the terms of payment between a ratepayer and the rating authority, and therefore a judicial function with regard to payment, apart from validity only, of the rate has been given to the magistrates, and in certain parts of the country they are availing themselves of their powers. The writer, himself a rating officer, wrote that in certain cases the rating officer in applying for distress warrants had to take the oath, and in the absence of the ratepayers concerned was closely questioned by the bench as to the debtor's position and circumstances, his work and his family, and whether he has been unemployed or sick. In one case in which the debtor had never appeared owing to war work, but had written to the court, the chairman of the bench had said that the magistrates considered that the Act of 1939 gave them the right to refuse the application by the rating authority for a distress warrant, or grant it subject to restrictions and conditions, notwithstanding the absence of the debtor, if they were satisfied that the case was one to which the Act applied, and the magistrate's clerk stated that he would advise the debtor of the decision of the bench. In October, 1941, the writer stated, counsel to the Urban District Councils Association gave it as his opinion that on an application for leave to levy distress the justices were entitled to make inquiries to satisfy themselves whether circumstances existed which entitled them to refuse leave or to give leave subject to conditions even if the defaulter did not appear. Their opinion that inability to pay was or was not due to war circumstances need not be formed by evidence or by a statement on behalf of the defaulter. Learned counsel contrasted s. 1 (5) dealing with bankruptcy petitions and winding-up petitions, where the Act requires the debtor or the company to prove the case to the satisfaction of the court. The writer drew the inference that an onus was placed on rating officers to make themselves fully aware of the circumstances of defaulting ratepayers and in doubtful cases they should attempt to obtain payment by instalments, as it seems that payment of rates by instalments now has a legal status, if only indirectly. One might add that this is indeed a salutary state of affairs, especially if it tends to save the ratepayers legal costs by inducing rating authorities to settle their cases out of court. Incidentally, this would also avoid the risk of the justices remitting payment of the rates, or a part thereof, under s. 10 (2) of the Money Payments (Justices Procedure) Act, 1935, in cases where the rating authorities have formed the opinion that it is not appropriate to exercise their own powers to do so. It seems fairly clear from the words " the appropriate court is of opinion " in s. 1 (4) that the court has power to act even in the absence of a statement by the debtor, although under r. 17 (1) of the 1940 Rules the debtor must be invited to attend at the hearing of the summons " to take advantage of the protection afforded by the said Act." The writer correctly states that the legal position is not affected by *Stepney Borough Council* v. *Woolf*, 59 T.L.R. 81. That case merely decides that the justices have no power under the Courts (Emergency Powers) Act, 1939, to refuse the issue of a distress warrant, but may only stay the levying of the distress until further order of the court.

Service of High Court Writs abroad.

A NEW order made by the Lord Chancellor on 12th March relates to the application of the procedure under R.S.C., Ord. 11, r. 8, for the service of a writ of summons or notice of a writ in foreign countries. The order recites that the Lord Chancellor has power to apply the procedure to different foreign countries from time to time, and that the procedure is by request to the Government of the foreign country where service is desired and is optional, and does not preclude the plaintiff from effecting service by any other method which is permissible and practicable in the foreign country. It further recites that His Majesty's Principal Secretary of State for Foreign Affairs is prepared to answer reasonable inquiries as to whether the procedure prescribed by the rule is likely to be available at any particular time in any specified foreign country to which the rule may be applied. The order proceeds to revoke all previous orders in force under Ord. 11, r. 8, and applies the rule to all countries except those in which service in accordance with the procedure prescribed by Ord. 11, r. 11, is permissible (called convention countries) and except the United States of America and countries which are part of H.M. Dominions and territories under His Majesty's protection, suzerainty or mandate. Order 11, r. 8, provides a safe method of service of writs through the Foreign Office and diplomatic channels, and for an official certificate or declaration upon oath transmitted through the diplomatic channels by the government or court of the foreign country to which the rule applies to be equivalent to an affidavit of service. It also provides for substituted service where personal service cannot be effected. The Lord Chancellor has power to apply the rule to foreign countries, and although Eve, J., held in *Re Campbell* [1920] 1 Ch. 35, that the words " foreign country " did not include either Scotland or any other part of the British Dominions, the new order expressly and, presumably, *ex abundanti cautela* excludes any part of His Majesty's Dominions.

Directors of War Production Undertakings.

IMPORTANT amendments of reg. 54CA of the Defence (General) Regulations relating to directors of war production undertakings, which was added as recently as 10th February, 1943 (S.R. & O., No. 196), are contained in an order (No. 437) revoking the old regulation and substituting therefor a new reg. 54CA. The original regulation conferred power on a competent authority " to give directions appointing to be a director of the company any person appearing to the authority to be experienced in the direction of the companies of a like character," the company being any war production undertaking. The first amendment effected is that the words " of a like character " are omitted from the new reg. 54CA, so that the competent authority may now appoint persons experienced in the direction of companies generally, whether of that kind or any other kind. Another alteration is that under the old regulation a director so appointed was to hold office until removed by directions of the competent authority. Under the new regulation he is to hold office for one year from the date of his appointment and no longer, but without prejudice to the power of the competent authority to re-appoint him or to appoint another person. Furthermore, the old regulation left it to the discretion of the competent authority to decide when it was expedient to make such an appointment " having regard to any expenditure or investment of public moneys incurred or made, or proposed to be incurred or made, in connection with the company or the war production of the undertaking." Under the new regulation the power to appoint is not to be exercised at all with respect to any company " unless public moneys of an amount which in the opinion of the competent authority is substantial having regard to the circumstances of the case, have been or are proposed to be expended by way of advances or grants of a capital nature to the company for the purposes of its undertaking or in providing capital assets for the use of the company." This somewhat restricts the power of appointment vested in the competent authority, and accordingly the new regulation omits the provision of the old regulation that before exercising its power the competent authority must serve notice of the proposed appointment on the company so as to enable the board to pass a resolution objecting to the appointment and to communicate it to the competent authority. The new provision making the appointment dependent on the expenditure or proposed expenditure of substantial public moneys is meeting at least as much political opposition as its predecessor, which gave the competent authority a much wider discretion. The present amendment was made as a result of a prayer for the annulment of the regulation by the Commons, and another prayer has now been tabled for the annulment of the present regulation.

Recent Decisions.

In *Hartstoke Fruiterers, Ltd.* v. *London Midland and Scottish Railway Co., Ltd.*, on 29th March (*The Times*, 30th March), the Court of Appeal (THE MASTER OF THE ROLLS, MACKINNON and GODDARD, L.JJ.) held that where a railway company failed to notify consignees in time of the arrival of trucks of bananas, with the result that the bananas deteriorated, the condition in the contract of carriage that notice should be given was governed by the condition that the company should not be liable for loss or damage or delay or detention except upon proof that the same arose from the wilful misconduct of the company or their servants, and as there was no wilful misconduct the railway company were not liable for the damage.

In *Point of Ayr Collieries, Ltd.* v. *Lloyd George and Others*, on 30th March (*The Times*, 31st March), SINGLETON, J., held that the court had no jurisdiction to inquire whether the Minister of Fuel and Power, if he brought his mind to bear on the matter and acted in good faith, had acted reasonably in taking over control of a colliery in exercise of his powers under reg. 55. His lordship remarked, however, that such an order should not be made lightly, and while there might be circumstances which would necessitate speedy action, if the Minister thought it necessary to take control in such a case, he might at least inform the directors.

In *Langley* v. *Wilson*, on 31st March (*The Times*, 1st April), the Divisional Court (THE LORD CHIEF JUSTICE, LEWIS and CROOM-JOHNSON, JJ.) held that the word " radius " in the Motor Fuel (Hire Service) Order, 1941 (S.R. & O., No. 1745), meant a straight line from the centre to the circumference of a circle, although the actual effect of this interpretation might be to permit journeys to a greater distance by road than the 15 miles straight radius. The order imposes limitations on journeys in vehicles using motor fuel otherwise than " within the inner radius " of 15 miles from the place where the car was normally kept.

In a case in the Divisional Court on 31st March (*The Times*, 1st April), CHARLES and HALLETT, JJ. (STABLE, J., dissenting), held that cases stated by justices on appeals by parties aggrieved by their decisions must be made within three calendar months of the decision. HALLETT, J., expressed doubt as to whether he had arrived at the correct conclusion.

War Damage Claims.

In a public statement on 5th April, 1943, the chairman of the War Damage Commission referred to the fact that towards the end of 1942 some 3,000,000 properties had been damaged or destroyed by enemy action. That number had not been very greatly added to. At the end of 1942, claims in respect of 1,000,000 properties had been paid (excluding payments on account) and, including payments to local authorities, the sum disbursed by the Commission amounted to £86,500,000. The number had now grown to nearly 1,200,000, and the amount expended was well past the £100,000,000 mark. The fact that there had been no serious raiding for so long did not mean that there was a diminution of the number of claims on the Commission. Rather, it had worked the other way. Claims came in week by week at an average of 9,000. At the moment they had rather less than 70,000 in hand, and that represented seven weeks of output in examination and payments. They had done and would continue to do all they could to obviate complaints by the public of delay in payments. The disposal of claims up to £100 (actually the great majority now payable in view of the building licence limitation) was now only a matter of a few weeks in cases unattended by any sort of complication. It was obviously of the greatest importance to the public that owners should know as soon as possible whether their properties were to be treated on a cost of works basis or on a value payment basis. The answering of the question in relation to each separate property necessitated the Commission reaching successive determinations upon three points; namely, whether the property was a "total loss" or "not a total loss"; whether there were any special circumstances which would prevent a "not a total loss" case getting a cost of works payment, or, conversely, would enable a "total loss" case to get the benefit of a cost of works payment; and, finally, in the case of a value payment case, upon the question how much the value payment should be. Classification was a big undertaking, and to accomplish it in time meant working to a carefully planned programme. That programme depends entirely on the staff of the Commission being able to classify the damaged properties in one street at one time. The work could not be done in time if special trips had to be made for special properties. Only in very exceptional cases would the Commission make a special determination outside its pre-arranged programme. The new War Damage (Amendment) Act, 1943, meant that a number of cases which, under the original Act, would have been difficult, if not impossible, to classify at all during the war could be classified now. The original test for determining whether or not a property was a total loss was laid down in s. 4 (1) (*a*) of the parent Act, and, for general purposes, it might be summed up in the formula: "Will the cost of reinstating the property be more than the value of the property (less the site) after such reinstatement?" There were, of course, a certain number of special factors to be taken into consideration, but that was the central point. It depended on an estimate of future post-war building costs and future post-war values, which at the present time it was quite impossible to forecast with any degree of accuracy. Progress in settling doubtful cases would therefore have been quite impossible in advance of the post-war period. The new Act provided a solution. Instead of having to balance two sets of estimates, value and cost, framed in the light of future and unknown conditions, they now had to frame both estimates at the March, 1939, level. The effect of that would be that if, on the 1939 figures of labour and material costs, the building would have been economically worth repairing, it would be considered to be worth repairing in the post-war period, and would not be classified as a total loss. The assistance that this is going to be to the Commission in getting on now with classification was plain. The Commission would make a great effort to ensure that *before the time when facilities would be available for the repair or rebuilding of damaged or destroyed properties, every* owner should be aware of the category into which his own property fell—whether or not it was to be treated as a total loss. On the occasion of the chairman's last public statement, he had said that they were receiving notifications of damage a year or more old, particularly in the Greater London area. The publicity given to that statement had the effect of speeding up some of the laggards, but it was found necessary later to fix a time-limit of ninety days from the date of damage beyond which any notification would have to be supported by a statutory declaration verifying the information as to the damage and explaining the circumstances for the delay.

The chairman referred to a misapprehension that if a house was damaged and the local authority stepped in and did first-aid repairs, then the person owning the building, or occupying it on a long lease, was absolved from taking any action in the matter of notifying the Commission, and said that all owners of damaged property should notify the Commission of that damage regardless of whether the first repairs were carried out by the local authority or not. The chairman referred to another misunderstanding in the public mind relating to a recent announcement that "the Commission has received from the Treasury a direction that it may, at its discretion, make an advance of the value payment." The inquiries received suggested that only those few words of the official notice remained in many people's minds. But there was a good deal more to it than that. The owner of an extensively damaged building might have carried out at his own expense work of demolition found necessary to protect surviving parts of the property, or to recover materials and fixtures which would be valuable, when, later, he rebuilt. He might even be able to construct some other building, a shop or factory, possibly on some other site. It was felt not to be equitable that such a person should stand for an indefinite time out of the money already expended, and thus the Commission could recoup him, subject to certain conditions, by paying an advance of his value payment. The chairman thought that the number of payments in accordance with the direction would be quite small, and would mainly be in respect of expenditure incurred in 1940 and 1941 when the restrictions on building works were much less severe. At present it was quite unlikely that an owner of a "total loss" property would obtain a licence from the Ministry of Works to spend more than £100 each year. The second misunderstanding concerned a recent announcement that the Ministry of Health, through the local authorities, was, in view of the housing shortage, speeding up the repair of some 40,000 more seriously damaged dwellings in London and the provinces, and that for this purpose an expenditure up to £250 per house would be permitted. This applied *only* to works to be carried out by the local authorities and not by individual private owners. Some people had construed this as a general relaxation of the Ministry of Works licensing restriction. The only interest of the Commission in the matter was that they were anxious not to be put to the disagreeable necessity of telling claimants who, thinking they were in order, had done without licence, say, a couple of hundred pounds' worth of work, that they could not pay them. For work carried out by the private owner the £100 limit without licence remained operative.

Criminal Law and Practice.

Evidence of Character after Conviction.

Our last article on this subject (*ante*, p. 107) dealt with the admissibility of hearsay evidence and the weight to be attached to it when the court seeks information, after conviction, as to a prisoner's character and antecedents. An interesting decision of the Court of Criminal Appeal on the duties of the police in giving evidence of character and antecedents has just been reported (*R.* v. *Van Pelz* [1943] 1 K.B. 157), and it provides a useful addendum to the existing case law.

The Recorder at the Central Criminal Court had awarded a woman prisoner a sentence of fifteen months' imprisonment for larceny. The police evidence as to her character and antecedents was that for many years past she had led a loose and immoral life and that she had associated constantly with convicted thieves. The officer added that she claimed to be a property owner, but that was not true. She was, he stated, a well-known prostitute who frequented the West End of London with a view to contacting men with money. The officer said that he had in his possession a letter to a property owning company from a man who said that he had met her at a well-known hotel and, after accepting an invitation to drink at her flat, had been robbed of £60. The officer said that she was "an adventuress," "a very dangerous woman indeed," "completely unscrupulous" and "for many years past she has lived entirely on her wits."

Having regard to the nature of these statements, the comments of Caldecote, C.J., were relatively mild. He said that, in the opinion of the court, the police officer went further than he should. Application for leave to appeal against sentence was, however, refused, on the ground that fifteen months was a proper sentence to give in the circumstances, and there was no reason to suppose that the Recorder sentenced the woman on the basis that all that the police officer had said was true, and particularly the latter part dealing with the alleged offence, and the statement that the accused was a dangerous woman.

His lordship added, however, that the question was an important one and the court found it necessary to enlarge upon what Lord Alverstone, C.J., said in *R.* v. *Campbell*, 6 Cr. App. R. 131, and what Humphreys, J., said in *R.* v. *Burton*, 28 Cr. App. R. 89.

In our last article we quoted Lord Alverstone's *dictum* approving the practice of the prosecution in providing hearsay police evidence of character and antecedents "where it would involve great difficulty and expense to prove the facts by legal evidence." The remarks of Humphreys, J., in *Burton's* case referred to evidence that police inquiries had proved definitely that the prisoner had been responsible for the losses which had taken place owing to stealing on the railway. Humphreys, J., described this as a most improper statement as the police should either have proved the additional offences in a prosecution or at least given the prisoner an opportunity of having them taken into consideration. This has, of course, been decided by the Court of Criminal Appeal on numerous previous occasions.

The rules of guidance laid down by Viscount Caldecote, C.J., may be summarised as follows: (1) The police officer should in general limit himself to previous convictions, antecedents, and, where the prisoner's age makes this material, his home life and upbringing. (2) The police officer must inform the court also of any matter, whether or not the subject of charges to be taken

into consideration, which he believes are not disputed by the prisoner and ought to be known by the court. (3) The police officer must inform the court of anything which the police know to be in the prisoner's favour, such as periods of employment and of good conduct. (4) The duty of the prosecution is to see that a police witness is kept in hand " and is not allowed, much less invited, to make allegations which are incapable of proof and which he has reason to think will be denied by the prisoner." (5) The right of the court is not affected to inquire into any matter on which the court itself thinks it right to ask for information.

The important point was made by the court that these rules were merely guides and neither so wide nor so exact as to cover every case. The present case presented points of resemblance both to *R.* v. *Everett*, 8 Cr. App. R. 156, and *R.* v. *Elley*, 15 Cr. App. R. 143, and also presented points of marked difference (see *ante*, p. 107). In both those cases and in the present case also allegations were made of other offences besides that on which there was a plea or verdict of guilty, but in the previous cases it was shown that those allegations had an effect on the sentence while in this case they had none.

While the law was already quite clear that charges dealing with other offences than that to which there is a plea or verdict of guilty cannot be taken into account without the consent of the prisoner, it was not previously so clear that general allegations such as one of association with thieves must not be allowed, much less invited, if they are incapable of proof and will probably be denied by the prisoner, and it seems to follow from this new decision that the prosecution ought to ascertain beforehand what the police evidence as to character and antecedents is and warn the police not to make general statements based on hearsay unless certain that their truth will be admitted. In the vast majority of cases the prisoner will deny the allegations if asked about them, and therefore it seems to follow that it is a safe rule for the court to reject hearsay evidence and only to act on what the police officer who goes into the witness box can testify of his own actual knowledge and experience.

The writer wishes to acknowledge his indebtedness to a correspondent for the suggestion of the subject of this and the preceding article. The correspondent enclosed a cutting from a London evening newspaper which makes a special nightly feature of reports of police court proceedings. The report in the cutting stated: " The immediate charge against her was wandering, but she had been known to the police previously, for taking a fur coat and a suit case from a spa hotel, and four other offences." If this means that those charges had never been proved, it provides an example of the sort of evidence as to character which is inadmissible, but the learned magistrate's treatment of the case seems otherwise unexceptionable, especially as it resulted in a remand for a medical report with a view to sending the prisoner to a home.

Obituary.

HIS HON. A. W. BAIRSTOW, K.C.

His Hon. Arthur William Bairstow, K.C., late Judge of County Courts, died on Sunday, 28th March, aged eighty-seven. He was educated at Trinity Hall, Cambridge, and was called to the Bar by the Inner Temple. He joined the North-Eastern Circuit and became a Bencher of his Inn in 1915, and Treasurer in 1937. He was appointed Solicitor-General of the County Palatine, Durham, in 1915, and was Recorder of Scarborough from 1917 to 1918. He was on Circuit No. 12 as County Court Judge from 1918 to 1924; and sat in the Metropolitan Courts from 1924 to 1928, and at Clerkenwell from 1926 to 1928.

SIR ALFRED BAKER.

Sir Alfred Baker, Chairman of the London County Council, died on Friday, 2nd April, aged seventy-two. He was admitted in 1899 and was a partner in Messrs. Kenneth Brown, Baker, Baker, solicitors, of Essex Street, Strand, W.C.2. In 1912 he was appointed legal adviser to the National Labour Party, the London Labour Party and the Miners' Federation of Great Britain. He had been a member of the L.C.C. from 1919; in 1930 he became Deputy-Chairman, and in March last was elected Chairman. He received the honour of knighthood in 1931.

MR. F. ALLCOCK.

Mr. Frederick Allcock, solicitor, of Messrs. Allcock, Allcock and Cousin, solicitors, of Nottingham, died on Friday, 26th March, aged seventy-three. Mr. Allcock was admitted in 1893, and was President of the Nottingham Law Society in 1938.

The Board of Trade have made the Description of Price Controlled Goods (" Utility ") Order, S.R. & O., 1943, No. 423, restricting the use of the word " Utility " in relation to any goods that are price controlled under the Goods and Services (Price Control) Acts. The order provides that, except under the authority of a licence, no person may supply, offer to supply or advertise any such goods upon which, or in relation to which, the word " Utility " (or any word resembling the word " Utility ") is used, without taking sufficient steps to prevent the use of the word from implying a Board of Trade scheme, or suggesting the existence of such a scheme. The order does not, of course, apply to " Utility " goods described as such in Board of Trade orders. The order came into force on 5th April, 1943.

A Conveyancer's Diary.

Fixtures.

IT is, perhaps, of some interest to note that the latest issue of the Law Reports contains a case about the affixation of chattels to realty, which was the subject of the " Diary " of 27th February, 1943. The case is *Hulme* v. *Brigham* [1943] 1 K.B. 153. Certain printers, in February, 1935, hired some printing machinery from the plaintiff on terms that they should pay a weekly rent and should have an option to buy. The printers had already issued debentures under which their freeholds were subjected to a charge by way of legal mortgage. The machines were installed in the mortgaged premises, but the owner of them had no knowledge of the mortgage. The machines weighed a good many tons each, and stood, stable and secure, on the floor by virtue of their own weight without any fastening. The apparatus for driving them were fixed to the freehold but was easily detachable from the machines. About eighteen months after the installation of the machines the debenture-holders appointed a receiver, who took possession of the premises. He refused to allow the plaintiff to take the machines away, claiming that they were part of the freehold. The plaintiff then brought an action of detinue, and succeeded.

Birkett, J., referred to the various well-known cases on this subject, most of which were discussed in my former article and need no repetition. He then observed that the researches of counsel had brought to light an " important case which had not been referred to in the better known cases which followed it." The case is *Northern Press and Engineering Co.* v. *Shepherd* (1908), 52 SOL. J. 715, a decision of Eve, J., of which I confess that I had not been aware. It certainly deserves to be known. It was remarkably apt to the question in *Hulme* v. *Brigham*, as the facts were indistinguishable. Eve, J., said that it would be introducing a dangerous precedent to hold that " because a machine is worked by fixed mechanism therefore it is a fixture. I must have regard to the nature of the machine. It is complete in itself for the purpose for which it was designed, and I cannot hold that any part of the driving mechanism is part of the machine itself." In both cases, accordingly, the machines were held to be chattels.

Now, it is to be noted that in both these cases there was no affixation of the machines, and the sole question was whether the fact that the machines were connected by a driving-belt, or something of the sort, to driving machinery that was affixed to the freehold, made the machine part of the freehold. Neither Eve, J., nor Birkett, J., had any difficulty in rejecting that contention. But these cases do not really touch the difficulties that arise where the chattel itself is affixed, however slightly; it will no doubt be remembered that there are at least two important cases—*Reynolds* v. *Ashby* [1904] A.C. 466, and *Lyon* v. *London City and Midland Bank* [1903] 2 K.B. 135—where different results flowed from very small distinctions. But it is satisfactory to have the question of mediate affixation cleared up; *Hulme* v. *Brigham* confirms the opinion, which I expressed in my former article, that a gas cooker does not cease to be a chattel by being screwed to a gas-pipe which is affixed to the freehold.

Stamp Duty on Assents.

Every conveyancer should refer to *G.H.R. Company, Ltd.* v. *Inland Revenue Commissioners* [1943] W.N. 61, which appears to settle a highly controversial practical point. Its daily importance is such that I feel it necessary to discuss it this week to some extent, without awaiting the full report in the Law Reports, as is usually desirable. Ever since the legislation of 1925 it has been doubtful whether it is right for personal representatives to use an assent rather than a conveyance for giving effect to interests in the realty of the deceased which have been acquired by purchasers for value; moreover, there has been controversy whether, if an assent is proper, it should or should not bear an *ad valorem* stamp. Macnaghten, J., as revenue judge, has held that such an assent should have an *ad valorem* stamp.

The question has been argued as follows: Subsection (1) of s. 36 of the Administration of Estates Act, 1925, says " A personal representative may assent to the vesting, in any person who (whether by devise, bequest, devolution, appropriation *or otherwise*) may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, including the statutory power to dispose of entailed interests, and which devolved upon the personal representative." Subsection (4) requires an assent in relation to a legal estate to be in writing, and subs. (2) provides that the assent shall operate to vest, in the person in whose favour it is made, the estate or interest in question. Subsection (11) states that " This section shall not operate to impose any stamp duty in respect of an assent."

Before 1926 a written assent was not necessary even for a legal estate, and so it was possible to assent orally or by conduct to the vesting of any interest arising under the will or intestacy. If that were done there could be no question of stamp duty, since that is a duty on documents and there would be no document. It follows that when subs. (4) made a document necessary for the most important sort of assent, it was necessary to provide

by subs. (11) that the section should not operate to impose any stamp duty. Otherwise some duty might have been leviable on every written assent, and the duty would have become inescapable in cases of legal estates because of subs. (4). But a further step has been taken in argument, and it is this: Subsection (1) does not empower personal representatives to assent in favour only of persons claiming under the will or intestacy; it enumerates such cases and then adds that an assent may be made in favour of persons entitled "otherwise." It is contended that the words "or otherwise," make the procedure by assent available in any case where a personal representative wants to transfer an interest in realty which belonged to his testator or intestate, so that it can be used to give effect to a contract for sale made by the deceased in his lifetime but not completed at his death, or a contract for sale made by the personal representative. Obviously, it would be absolutely safe to use an ordinary conveyance by deed in such a case, but equally clearly there would be attractions in an assent, since it is a simpler document and was supposed to be immune from stamp duty. In my opinion an assent in such a case would be perfectly valid and that view is confirmed by the recent decision. But the procedure by assent has lost much of its attraction because Macnaghten, J., has held that an assent giving effect to a contract for sale is liable to *ad valorem* stamp duty.

Before the recent case the argument was that an assent could be used in any event, that the right to make assents flowed from s. 36 (1); and that s. 36 (11), by providing that "*this section* shall not operate to impose any stamp duty in respect of an assent," freed all assents from such duty because all assents occur under and by virtue of the section.

I had myself supposed that this argument was correct, though admittedly anomalous. It has been argued on the other side that it was at least improper to use this method, as being one to evade duty, and that anyhow a conveyance (which certainly would attract duty) is the proper way to give effect to a contract for sale.

Macnaghten, J., had to deal with a case where a testator had made in his lifetime a contract for sale, to which his executors, after his death, gave effect by a written assent, upon which the revenue authorities claimed stamp duty. This contention succeeded. The learned judge said that subs. (2) makes an assent actually vest the property in the person in whose favour it is given, and that it thus amounts to a "conveyance or transfer on sale" within the Stamp Act, and so attracts liability to duty. He added, as at present reported, that subs. (11) "was not intended to apply to such a case as the present where the executors instead of conveying the estate to the purchasers, had given an assent."

It will be interesting to see precisely what the learned judge did say on this last point; I doubt whether he simply said that subs. (11) does not apply merely because it was not intended to apply. Statutes, unfortunately, often do things which no one intended them to do. I imagine that we shall find that he reasoned somewhat as follows: "It is true that under subs. (11) the section is not *to impose* any stamp duty on an assent. But a conveyance or transfer on sale is liable to *ad valorem* duty by reason of the Stamp Act and a transfer is a transfer whether it is by deed or by assent. Subsection (1) certainly allows an assent to be used in those cases instead of a conveyance, but subs. (1) does not alter the provisions of the Stamp Act. There is no question of stamp duty being imposed in this case by s. 36: it is imposed by the Stamp Act and s. 36 does not get rid of the liability under that Act."

It may be, of course, that the case will wear a different aspect when the full report is available, but in the meantime I do not think that a purchaser's solicitors would be safe in allowing their client to accept an assent and to refrain from getting it stamped. It may be that in some cases no harm would follow from refraining, because a title to a legal estate acquired from personal representatives ought not nowadays to disclose the beneficial title under which the person taking the assent became qualified to take it. But the true facts may easily become known to a later purchaser and he would, under the recent decision, be entitled to complain of an unstamped assent being produced as part of the title offered to him. And in any case, once it has been clearly held, as it has been, that duty is leviable, it is, at the lowest, of doubtful propriety to be a party to evading payment of duty.

Parliamentary News.

HOUSE OF LORDS.

Railway Freight Rebates Bill [H.L.].
Read Second Time. [6th April.

HOUSE OF COMMONS.

Catering Wages Bill [H.C.].
In Committee. [6th April.

Courts (Emergency Powers) Bill [H.L.].
Read First Time. [31st March.

Mr. Richard Whitmarsh Gray, solicitor, of Park Street, Southwark, S.E., left £22,077, with net personalty £19,788.

Landlord and Tenant Notebook.

Rent Paid before Due.

THE point decided in *District Bank, Ltd.* v. *Luigi Grill, Ltd.* (1943), 1 All E.R. 136, was not one which concerns this "Notebook," but the facts are reminiscent of cases in which tenants, having paid rent before it was due, have been called upon to repeat the payment when quarter-day arrived. Sometimes the question has been decided in their favour, sometimes not.

The recent case was a claim based on L.P.A., 1925, s. 183 (2). A thirty-five year underlease of certain property was granted in 1936, at a progressive rent. A guarantor paid three years' rent in advance. Next year the underlease was charged by way of legal mortgage to secure an overdraft granted by the plaintiffs. In 1938 they appointed a receiver, who reported that rent had been paid till December, 1939. The action, which failed, was brought on the ground of alleged concealment of an instrument or incumbrance.

Now, in the strict view of the law, payment of rent before it is due is just impossible, and it is only for the sake of descriptive convenience that I have used the expression. *Ex hypothesi*, when there is nothing due there is no debt; and gales of rent are not "instalments." But the point can be made without much casuistry. Older cases, decided in the days when natural economy was less remote, will illustrate. It was said in *Cromwell (Lord)* v. *Andrews* (1583), Cro. Eliz. 15: ". . . if he [the lessee] pay the rent before the day to the lessor, and hath his acquittance, and at the day when the rent is due, the lessor demands it, and none is there to pay it, the condition of re-entry [on non-payment of rent] is broken; for the payment before the day is not a payment of the rent, but of *a sum in gross*." The point is worked out in *William Clun's Case* (1613), 10 Co. Rep. 127*a*: "If the . . . lessee pay his rent before the day, it is voluntary, and not satisfactory . . . because the rent reserved is to be raised out of the profits of the land, and is not due until the profits are taken by the lessee. . . . The rent so reserved . . . is *to be rendered and restored out of the issues and profits*."

These authorities remind us that in strict law the relationship of landlord and tenant is not that of someone parting with an interest, measured by time, in consideration of a sum of money payable by instalments. It is analogous rather to an arrangement between, say, the owner of a cow, and someone who undertakes to shelter and feed her in consideration of retaining so much of the milk yield. The owner cannot, of course, collect his share before milking-time.

But at the present day, it may be said that there is not much risk of a tenant, who has obligingly paid "rent" in advance, being successfully called up to repeat such payment *by the same landlord*. The clue to the situation is to be found in a passage from the judgment of Byles, J., in *Nash* v. *Gray* (1861), 3 F. & F. 391, an action for rent brought by the executor of a landlord. The defence was that the tenant had "habitually" advanced moneys to the deceased, and as a result owed him nothing. The advances were made by cheques made payable to the deceased's firm, but were shown to have been endorsed by him. The learned judge left the matter to the jury as a question of appropriation of payments, and they found for the defendant; but what enabled his lordship to take this course in the face of the older authorities mentioned above is shown by this important passage from the judgment: "If the demise were under seal the difficulty would be greater; as it is, a parol contract may be varied by parol, and the rent made payable in advance."

This shows how courts can and are, I submit, likely to, deal with cases in which landlords seek to rely on *Cromwell (Lord)* v. *Andrews* and *Clun's Case* in order to collect the same amount twice. Any lease can be varied, or surrendered and replaced by a new one; and this is what happens, in effect, in such cases. And, while Byles, J., limited himself to parol leases, since it has been held in *Berry* v. *Berry* [1929] 2 K.B. 316 that a contract under seal may be varied by a parol contract, the learned judge's qualification has lost force.

But Byles, J., was not dealing with a case in which a reversion has been assigned *inter vivos*; and to see what may be the position when that happens one should consult *De Nicholls* v. *Saunders* (1870), 5 L.R.C.P. 589, and *Cook* v. *Guerra* (1872), L.R. 7 C.P. 132. In the former, an action for illegal distress, it appeared that the plaintiff had taken a fifty-five-year lease in May, 1865, the rent being payable on the usual quarter-days. Next month his landlord without informing him mortgaged his interest to the defendants. On 12th March, 1869, the landlord, being in need of ready money, asked the plaintiff to let him have two quarters' rent in advance. The plaintiff obliged. On 24th March the mortgagees notified the plaintiff of their existence and required him to pay the rent to them. On the 25th March the landlord was adjudicated a bankrupt. The plaintiff declined to pay rent to the defendants, who distrained.

Willes, J., expressed the position in these terms: "There would be an obvious injustice in that [i.e., in the assignee losing his right to rent] even if the payment were made before the assignment, because a person who bought the reversion on the faith of the rent being due would be defeated by the transaction

between the landlord and tenant of which he had no notice. But that would not be so strong a case as this, because a release by the landlord of all rent before assignment would be good against an assignee of the reversion; but this is a case in which a person gets an assignment of the reversion, obtains a right to give notice to the tenant to pay the rent to him before payment is made to the assignor, and in which, therefore, the landlord has no power to accept payment or give a release at the time the payment was made . . ."

In *Cook* v. *Guerra*, a claim for two and a half years' rent by a mortgagee in which it was found that the defendant had paid two years' rent when taking the premises and had been notified after the fifth quarter, the same judge said: "Although the rent was prepaid in the year 1864 so as to satisfy so much of the five quarters claimed as became due prior to the notice of the grant to the plaintiff, such prepayment affords no answer as to the residue."

Reference can also be made to *Municipal Permanent Investment Building Society* v. *Smith* (1888), 22 Q.B.D. 70 (C.A.), and to *Ashburton (Lord)* v. *Noctor* [1915] 1 Ch. 274 (C.A.). In the one, the defendant took a lease after his landlord had mortgaged the land to the plaintiffs, the lease being within his powers as a mortgagor in possession; but when the lease was made the defendant lent, or had lent, the landlord some money, and the latter agreed that no rent should be claimed till the debt was satisfied. It was held that this "independent agreement" did not affect the mortgagee. And in *Ashburton (Lord)* v. *Noctor* a tenant who had prepaid a large sum on account of rent was held liable to pay the like amount to a receiver subsequently appointed on the application of a judgment creditor of the landlord.

To-day and Yesterday.

LEGAL CALENDAR.

April 5.—On the 5th April, 1756, "a soldier was shot on Chatham Hill for mutiny, having refused to work on the new fortifications erecting there and having persuaded most of the corps to follow his example. When his death warrant was signed all his boasted fortitude forsook him and he repented heartily of his temerity."

April 6.—"The Sessions began at the Old Bailey on the 6th April, 1785, when among other felons the noted George Barrington was tried for larceny, in stealing a gold watch in the pit passage of Drury Lane, the property of Mr. Bagshawe. Mr. Bagshawe missed his watch, saw Barrington behind him and charged him with it 'I, your watch!' said he, and held up his hand with the palm downwards. That instant he heard a glass break, and stooping picked up his watch and secured the prisoner. Another witness heard the watch drop but could not tell from whom it fell, but the prosecutor was positive it must be the prisoner. This was the whole of the evidence, and the judge called upon the prisoner to make his defence, which he did in so masterly a manner as astonished the whole court." Barrington, a young Irishman, thirty years old at that time, had an amazing career as a pickpocket, mostly in the highest circles. (Once he robbed a nobleman of a diamond order at a levée.) Twice already he had been condemned to the hulks, but this time he was acquitted. Five years later, however, he was transported to Botany Bay, but there he took a new course, was emancipated, and became high constable of Paramatta.

April 7.—On the 7th April, 1830, John Russell, a decent-looking man of thirty-three, was tried at the Taunton Assizes for the murder of a girl named Joan Turner, who had been found with her throat cut in a field near Chard, where they both worked in a factory. The evidence against him was circumstantial: lights in his house late on the night of the crime, the sound of the pump nearby being worked, spots of blood on the stairs, clothes recently washed, his unusually clean appearance at the factory on the following day. The trial lasted twenty-three hours and sixty-three witnesses were examined. Finally, after a consultation of ten minutes, the jury brought in a verdict of guilty, and Gaselee, J., passed sentence of death. Russell, who firmly protested his innocence, said that he had led a very sinful life and he thought his suffering wrongfully would be received as an atonement. He was subsequently reprieved.

April 8.—One evening as William Veale, a cowkeeper of St. John's Wood, was walking down the Edgware Road towards London and had come near the third milestone, where some high trees darkened the way, a stranger fired a pistol at him and then made off. Wounded in the neck, he got to Kilburn as best he could to find a surgeon and the police. On the 8th April, 1852, Samuel Dandy, a young man of twenty-four, was tried at the Old Bailey for attempting to murder him. He had been ruined by horse-racing, and he said his object in shooting was to get money. He was found guilty of wounding with intent to do grievous bodily harm and sentenced to transportation for life.

April 9.—On the 9th April, 1856, Lord Campbell, after a sharp debate, "prevailed on the House of Lords to make an order for the Lord Justice General and the Lord Justice Clerk of Scotland to be sworn standing by the Woolsack instead of below the bar. Hitherto there has been a strong indisposition to treat Scotch judges when appearing before the House with any mark of respect, and when their presence has been required they have been sworn and examined as ordinary witnesses. Henceforth they will be placed on the Woolsack like the English judges."

April 10.—On the following day, the 10th April, Lord Campbell recorded in his diary: "These two legal dignitaries were examined to-day before the Select Committee on the Appellate Jurisdiction of the House of Lords, and amused us very much, the Lord Justice General McNeill saying that in its present state it is very unsatisfactory and the only remedy is to have a Scotch lawyer a member of the tribunal as a peer for life; while the Lord Justice Clerk declared that the jurisdiction in its present state is perfect and that the proposed addition of a Scotch lawyer would be the ruin of it. Of the latter opinion is Lord Brougham, who is now at Cannes, but from whom I receive letters on the subject almost daily. He will be back soon to embroil the fray." In 1867 the Lord Justice General became a peer as Lord Colonsay.

April 11.—On the 11th April, 1752, Nicholas Mooney and John Jones were condemned to death at the Bristol Assizes for highway robbery. Mooney begged the judge to spare the other's life as he had inveigled him into that trouble. He owned that he himself had committed many robberies and coined money, and declared he was content to die as he deserved, asking only three Sundays grace to prepare.

Review.

Annual Digest and Reports of Public International Law Cases. Years 1938–40. Edited by H. LAUTERPACHT, M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1942. Medium 8vo. pp. xxxiv and (with Index) 607. London: Butterworth & Co. (Publishers), Ltd. 55s. net.

Here, larger than its predecessors, is the ninth volume of the "Annual Digest and Reports," now become a series of selected "International law reports." This volume, the learned editor points out, presents "an interesting gloss on events happening in a period of unprecedented turmoil in the history of the world"—the Spanish Civil War, the conquest of Abyssinia, the legislation of the Nazi régime. International administration is entirely unrepresented. The few cases coming before the International Court were concerned with pleas to the jurisdiction. International adjudication, he concludes, to be of real value, must be obligatory. Two hundred and twenty-three cases, drawn from the courts of many countries, are reported with lucid precision of fact and citation of judgment. About forty are English decisions given during the present war, collected and classified concerning war, and the effects of war. Among them is *Weiss* v. *Weiss*, (1940), S.L.T. 447, where the Court of Session held that an enemy alien, resident in Scotland, and exempt from internment, was entitled to sue for divorce (Case No. 206). This part contains some useful cases on warfare at sea—the jurisdiction and procedure in prize. Sixty cases come from the courts of the United States, whose precedents our courts increasingly regard of high persuasive authority. In *Anninger et Al.* v. *Hohenberg et Al.*, Collins, J., of the Supreme Court, refused to recognise a confiscatory measure by the German Reich against an Austrian on account of his race: "The liquidation process is sheer confiscation . . . We can stay the liquidator's hand when it attempts to seize that which is here, and which belongs to the plaintiffs" (Case No. 7). See also *Johnson* v. *Briggs, Inc.* (Case No. 33). On the other hand, the courts cannot review the acts of another government in dealing with citizens *within* its territory. "It is legally immaterial that such acts are unjust morally" (*McCarthy* v. *Reichsbank*) (Case No. 8). A motion to strike out a defence setting up a German social law as just cause for terminating a contract of employment, granted by the judge, was refused by the Court of Appeal of New York on the ground that the facts must be determined at the trial. The report of *Holzer* v. *Deutsche Reichsbahn-Gesellschaft et Al.* (Case No. 71), in both courts, deserves to be read.

A New York statute providing that chauffeur's licences should not be issued to aliens, except to those who had declared their intention of becoming American citizens (thus excluding British subjects), was held by the Supreme Court to be unconstitutional and void, because it was in violation of a Treaty of 1815 between the U.S. and Great Britain providing for "a reciprocal liberty of commerce." "Licensing houses cannot be used as a guise to defeat rights secured by treaties": *Magnani* v. *Hartnett* (Case No. 123). A number of useful cases are reported from Australia, Canada and South Africa, as well as from the courts of the countries of Europe and South America. The index is comprehensive and excellent. There is a table of cases classified according to country. A practitioner who has before him a problem of public or private international law, or of the laws of war must find this "Digest" indispensable.

Mr. JOHN LEONARD STONE, barrister-at-law, has been appointed Chief Justice of the High Court of Judicature in Bombay in the vacancy which will occur in September or October next on the retirement of Sir John Beaumont. Mr. Stone was called by Gray's Inn in 1923.

Notes of Cases.

HOUSE OF LORDS.

Tritonia, Ltd. and Others *v.* Equity and Law Life Assurance Society.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Macmillan and Lord Clauson. 8th March, 1943.

Practice — House of Lords — Limited Company and director appeal — Director appears in person—Seeks to represent company.

Appeal from Court of Session.

The appellants in this case were two companies and B, a director of both of them. At the beginning of the hearing B stated that he appeared in person on his own behalf and had been authorised by resolutions of the directors of both companies to appear on their behalf also. The House considered whether B, not being a barrister, could be heard on behalf of the companies.

Viscount Simon, L.C., said that the House considered that B could not be treated at the Bar as representing in the appeal anybody but himself, and that a limited company, either as appellant or respondent, must appear by counsel. The House would grant a short adjournment to enable the two companies, if they wished, to appear by counsel.

Counsel: *Clyde*, K.C., and *Macrae Williamson*.

Solicitors: *Rooper & Whately, for Murray, Beith & Murray*, W.S., Edinburgh.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Leivers *v.* Barber.

Scott, Goddard and du Parcq, L.JJ. 9th March, 1943.

Workmen's compensation—Application for review of weekly payments Claim in respect of period more than six years previously—Whether Statute of Limitations applied—Limitations Act, 1939 (2 & 3 *Geo.* 6, c. 21), *s.* 2 (1) (*d*).

Respondents' appeal from an order made by His Honour Judge Willes at Ilkeston County Court, on a workman's application for a review.

The workman had in 1913, at the age of seventeen, met with an accident resulting in serious injury to his spine. After five years of total incapacity he was given light work, and from 1918 to 1941 he was driver on a stationary electric haulage engine. Before 1941 his disability was increasing and after a number of interruptions he became totally incapacitated and was forced by his illness to give up work on 13th August, 1941. He was likely to remain totally incapacitated for the remainder of his life. Compensation, first for total and then for partial incapacity, was paid down to 1920 or 1921, but no agreement was ever recorded and no arbitration ever took place. The learned county court judge, however, held, rightly as the Court of Appeal agreed, that there was an agreement which, under s. 1 (3) of the 1906 Act, was equivalent to an award. No compensation was paid between 1920 or 1921 and 8th October, 1940. He was then paid 28s. a week for the month down to 6th November, 1940, and was paid no more until 13th August, 1941, from which date onwards the employers paid him 28s. per week as for total incapacity caused by the original accident in 1913. The workman's application for a review was dated 12th February, 1942, and was rightly made under the 1906 Act, Sched. I, para. 16. The application was made in respect of the payments in 1940, 1941 and 1942. These were made nominally without prejudice, but it was not disputed that the workman was then totally incapacitated and that this was due to the accident in 1913. Among other defences to the application for a review the employers relied on the Statutes of Limitations. The learned county court judge found (*inter alia*) that the workman was entitled to a review under the 1906 Act, that there was total incapacity from 8th October to 6th November, 1940, and since 13th August, 1941, and that otherwise there was partial incapacity from 12th February, 1932. He accordingly ordered payment of £395 5s. 11d. which included payments both for total incapacity of £1 15s. per week and payments for partial incapacity going back to 12th February, 1932.

Scott, L.J., after distinguishing between a review under Sched. I, para. 16, of the 1906 Act and one under s. 11 of the 1925 Act, on the ground, *inter alia*, that there was no limitation of time at which the review might take place, referred to *Birch* v. *Pease* [1941] 1 K.B. 615, 625–7; *Gilson* v. *Wishart* [1915] A.C. 18, 29; *Wolseley Motors* v. *Sharp* (1925), 18 B.W.C.C. 15; *Guest, Keen & Nettlefolds, Ltd.* v. *Williams*, 18 B.W.C.C. 68, 77; and *Talbot* v. *Vickers, Ltd.* [1925] 2 K.B. 667. He said that all these cases, decided on the 1906 Act, were conclusive that the workman's right to a weekly payment might, for the purpose of ending it, diminishing it, or increasing it, be reviewed as from any past date subsequent to the date when, either by agreement or by arbitration, it was last quantified. In a series of cases it had been decided that the continuance of actual payment was not a condition precedent to the right of review, both under the 1906 Act (*Wilson* v. *Baird & Co.* [1923] S.C. 164) and under the 1925 Act (*Vickers-Armstrong, Ltd.* v. *Regan* [1933] 1 K.B. 232). (See also *Piper* v. *India Rubber, etc., Co., Ltd.* (1939), 32 B.W.C.C. 100, and *Dobson Ship Repairing Co., Ltd.* v. *Burton* [1939] A.C. 590, aff. 31 B.W.C.C. 294.) The county court judge was therefore entitled to go back to 12th February, 1932. There remained the very important controversy as to whether the Workmen's Compensation Acts were within or without the purview of the Limitation Act, 1939. In his lordship's view the language of the Limitation Act itself was sufficiently clear to exclude the whole statutory system of the Workmen's Compensation Acts from its purview. Proceedings under them, whether by agreement or arbitration, were not "actions to recover a sum recoverable by virtue of any enactment" under s. 2 (1) (*d*) of the Limitation Act, 1939; the arbitrations which took place under the Workmen's Compensation Acts were not arbitrations to which s. 27 (1) and (7) had application, and if they were, they would be under enactments which, for the purpose of the expression in the Limitation Act, 1939, s. 32, "prescribe their own periods"; see, for example, the 1925 Act, s. 14. The Limitation Act was essentially a general Act and the Workmen's Compensation Acts were essentially special, and *generalia specialibus non derogant* (*Bishop of Gloucester* v. *Cunnington*, 86 Sol. J. 388. The present statutory system of workmen's compensation insurance applied to the vast majority of the population. The permanent power of either party to apply for a review afforded great protection against the sort of risk against which the Statutes of Limitation were intended to provide. The principal regulations (No. 1092 of 1913) made under s. 42 provide for the keeping by employers of books containing records of all cases of temporary or permanent disablement so that no employer ought ever to be ignorant of what cases he had on his books. The chief object of the Limitation Act was thus achieved under the Workmen's Compensation Code. The appeal should be dismissed and the cross-appeal allowed.

Goddard, L.J. (dissenting), said that s. 2 of the 1906 Act replaced by s. 14 of the 1925 Act imposed a condition precedent to the bringing of proceedings, but did not impose a period of limitation. It could hardly be doubted that workmen's compensation was money recoverable under an enactment as much as money recoverable by a workman under the Truck Acts (*Pratt* v. *Cook, Son & Co. (St. Paul's), Ltd.* [1940] A.C. 437; *Kenyon* v. *Darwen Cotton Manufacturing Co., Ltd.* [1936] 2 K.B. 193). It seemed to his lordship difficult to say that when a matter under the Act was brought before the county court judge and heard by him, it was not a "proceeding in a court of law" and accordingly within the Statute of Limitations (*Hunter* v. *Simmer* [1922] 2 K.B.1 70). An award, whether on an original application or a review, could be enforced as a judgment or order of the court, and the combined effect of ss. 2 and 31 of the Limitation Act, 1939, was to make proceedings in a court of law to enforce an award subject to six years' limitation.

Du Parcq, L.J., delivered a judgment agreeing with Scott, L.J.

Counsel: *Norman Winning* and *J. L. Gamger*; *G. Justin Lynskey*, K.C., and *F. W. Beney*.

Solicitors: *Johnson, Weatherall, Sturt & Hardy*, for *Parker Rhodes, Cockburn & Co.*, Rotherham; *Taylor, Jelf & Co.*, for *Hopkin & Son*, Mansfield.

[Reported by Maurice Share, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION.

Polpen Shipping Co., Ltd. *v.* Commercial Union Assurance Co., Ltd.

Atkinson, J. 8th December, 1942.

Marine insurance—Meaning of "ship or vessel"—Institute Time Clauses —Whether flying boat a ship or vessel.

Action for £202 9s. 10d., the amount claimed to be the defendants' proportion of loss under a time policy of insurance on the plaintiffs' motor vessel. The defendants denied liability on the ground that the boat with which the motor vessel collided was a flying boat and not a "ship or vessel" within cl. 1 of the Institute Time Clauses attached to the policy. That clause provided for payment "if the ship hereby insured shall come into collision with any other ship or vessel." The motor vessel during the life of the policy collided in harbour with one of H.M. flying boats, fitted with two engines and designed to carry a crew of six, with a normal range of 700 miles and a maximum range of 1,100 miles. The boat did not fly along the surface of the water except when taking off or alighting. Its hull was 52 feet 8 inches in length and was constructed on the usual lines of a boat.

Atkinson, J., said that s. 742 of the Merchant Shipping Act, 1894, provided: "'Vessel' includes any ship or boat or any other description of vessel used in navigation, and 'ship' includes every description of vessel used in navigation not propelled by oars." The dominant idea was something which was "used in navigation," and not merely capable of navigating for the moment. His lordship referred to *The Gas Float Whitton No. 2* (1) [1896] P. 42; [1897] A.C. 337; *Nicholson* v. *Chapman* (1793), 2 H. Bl. 254; *Merchant's Marine Insurance Co., Ltd.* v. *North of England Protecting and Indemnity Association*, 25 Ll. L. Rep. 446; 26 Ll. L. Rep. 201; and *Watson* v. *R.C.A. Victor Co., Inc.*, 50 Ll. L. Rep. 77. In the last case there was a passage in the sheriff's judgment, with which his lordship agreed, which contained the words: "In short, in popular language, no one would, I think, describe a seaplane as a ship, vessel or boat. But further, it is, I think, plain that a seaplane does not satisfy the definitions or descriptions of a ship or a vessel given in either the Merchant Shipping Acts or in the decided cases." His lordship then referred to the Air Navigation Act, 1920, ss. 11 and 12, and asked, if aircraft were ships or vessels, were two sets of rules applicable to them, and to the Air Navigation Act, 1936, s. 3 (2) and (3). The conclusion at which his lordship arrived was that it was impossible to hold that the words "ship or vessel" in the policy included the flying boat. A flying boat's work was to fly, and its ability to float and navigate short distances was merely incidental to that work. Judgment for defendants with costs.

Counsel: *Sir Robert Aske*, K.C.; *Devlin*; *Pritt*, K.C.; *A. K. Hodgson*.

Solicitors: *Holman, Fenwick & Willan*; *Parker, Garrett & Co.*

[Reported by Maurice Share, Esq., Barrister-at-Law.]

At the annual meeting of the Birmingham Law Society, on Wednesday, 24th March, the following officers were elected: Mr. A. J. Gateley, President; Mr. J. F. West, Vice-President; Mr. J. F. Crowder, Mr. W. C. Mathews, and Mr. G. C. Barrow, Joint Honorary Secretaries and Treasurers.

War Legislation.

Statutory Rules and Orders, 1943.

No. 462. **Alien.** Restriction. Direction, March 19.
E.P. 334. **Apparel and Textiles.** Footwear (Manufacture and Supply) (No. 9) Directions, March 25.
E.P. 21. Apparel and Textiles. Utility Apparel (Men's, Youths' and Boys' Shirts, Underwear and Nightwear) Direction, March 30.
E.P. 400. Apparel and Textiles. Utility Apparel (Women's and Maids' Underwear and Nightwear) Directions, March 29.
E.P. 279. **Control of Wrecks, etc.** Trinity House (Control of Wrecks and other Obstructions) (Revocation) Order. Feb. 22.
No. 472. **Customs.** Additional Import Duties (No. 1) Order, March 29.
No. 471. Customs. Import Duties (Commissions) (No. 2) Order, March 29.
No. 439. **Excess Profits Tax.** Relief from Double Excess Profits Tax (Jamaica) Declaration, March 22.
No. 440. Excess Profits Tax. Relief from Double Excess Profits Tax (Mauritius) Declaration, March 22.
E.P. 460. **Feeding Stuffs** (Regulation of Manufacture) Order, 1942, General Licence, March 23.
No. 461. **Fire Service** (Emergency Provisions). National Fire Service (General) (No. 2) Regulations, March 22.
E.P. 450. **Fuel and Lighting Registration and Distribution Order,** 1942. General Direction (Restriction of Supplies) No. 6, March 18.
E.P. 494/L.10. **Metropolitan Police Courts** (No. 3) Order, March 26.
E.P. 468. **Police Amalgamation (Hampshire)** Order. March 24.
E.P. 454. Police Amalgamation (Kent) Order, March 22.
No. 481/S.13. Police (Appeals) (Scotland) Rules, March 12.
No. 473. Police, England and Wales. Police (Appeal) Rules, March 11.
No. 482/S.14. Police (Scotland) Regulations, March 11.
No. 483/S.15. Police (Women) (Scotland) Regulations, March 11.
E.P. 463. **Railways** (Carriage Paid) (Amendment) Directions, March 24.
E.P. 465/S.12. **Temporary Workers in Agriculture** (Scotland) (Minimum Wages) Order, March 5.
No. 469. **War Damage** (Highways Scheme) Order, March 25.

Notes and News.

Notes.

The next General Quarter Sessions of the Peace for the Borough of Stamford have been fixed for Wednesday, 21st April, at 10.30 a.m., at the Town Hall, Stamford.

The usual monthly meeting of the Directors of the Law Association was held on the 5th April, Mr. G. D. Hugh Jones in the chair. There were seven other Directors present and the Secretary. The sum of £196 was voted in relief of deserving applicants, one new member was elected and preliminary arrangements made for the annual general court.

At the sixty-seventh annual general meeting of the Bradford Incorporated Law Society held on Wednesday, 31st March, Mr. G. R. Bottomley, a partner in the firm of Messrs. Gaunt, Fosters & Bottomley, of Burtons Chambers, Kirkgate, Bradford, was appointed President for the year 1943, and Mr. J. Eaton (of Messrs. J. Eaton & Co.) and Mr. J. H. Sutcliffe (of Messrs. Gordons) were appointed Vice-Presidents.

The Council of the Royal Society of Arts give notice that the next award of the Swiney Prize will be made in January, 1944, the hundredth anniversary of the testator's death. Dr. Swiney died in 1844, and in his will he left a sum of money to the Royal Society of Arts for the purpose of presenting a prize, on every fifth anniversary of his death, to the author of the best published work on jurisprudence. The prize is a cup, of a value of £100, and money to the same amount. The award is made by a joint committee of the Royal Society of Arts and the Royal College of Physicians, which appoints special adjudicators. The prize is offered alternately for medical and general jurisprudence, but if at any time the committee is unable to find a work of sufficient merit in the class whose turn it is to receive the award, it is at liberty to recommend a book belonging to the other class. On the last occasion of the award (1939) the prize was awarded for medical jurisprudence. It will, therefore, be offered on the present occasion for general jurisprudence. Any person desiring to submit a work in competition, or to recommend any work for the consideration of the judges, should do so by letter, addressed to the Acting Secretary of the Society, John Adam Street, Adelphi, W.C.2, not later than 30th November, 1943.

WAR DAMAGE REPAIRS.

The War Damage Commission issued in the *London Gazette* of the 30th March a notice which affects the following areas:—

Urban District of Cheshunt:—

(*a*) *Area No.* 1 comprised by the hereditaments known as Nos. 41 to 63 (odd numbers inclusive) Eleanor Cross Road, Waltham Cross.

(*b*) *Area No.* 2 comprised by the hereditaments known as Nos. 61 to 69 (odd numbers inclusive) College Road, Cheshunt.

A plan of the areas has been deposited and may be inspected at the Council Offices, Manor House, Waltham Cross.

The War Commission issued in the *London Gazette* of the 2nd April a notice which affects the following area:—

Borough of Erith:—

An area comprised by the hereditaments known as Nos. 1 to 45 (odd numbers), Picardy Street; The Cosy Cinema, Picardy Street; Nos. 12 to 74 (even numbers), Picardy Street; The Royal Arsenal Co-operative Society premises, junction of Picardy Street, Sheridan Road and Gilbert Road; Nos. 1 and 2, Sheridan Road; Nos. 1 and 3, Gertrude Road; Nos. 2 to 10 (even numbers), Gertrude Road; Contractor's yard (in the occupation of Messrs. Gearing & Abbott, Builders, and G. S. Williams, Haulage Contractors) at the northern end of Lyndon Road with access between Nos. 5 and 7, Picardy Road; Nos. 1 to 11 (odd numbers), Picardy Road; Nos. 2 to 38 (even numbers), Station Road; Nos. 1 to 4 (inclusive), Railway Place; Disused yard and factory buildings, Railway Place.

A plan of the area has been deposited and may be inspected at the Council Offices Erith.

The notices are issued under s. 7 (2) of the War Damage Act, 1941, hereby provision is made for securing that the making of payments by the Commission in respect of war damage shall have regard to the public interest. The publication of the notices in the "Gazette" is, therefore, of great importance to all those with interests in war damaged property, and particularly to those professionally concerned with work on such properties, since upon them must, in practice, fall the responsibility, on behalf of their clients, for seeing that the requirements of the Act are complied with.

The effect of the notices are that any person proposing to execute any work at all for the repair of war damage in the named areas must first inform the Commission. That body in its turn will consult the appropriate local and planning authorities to ascertain whether the carrying out of the proposed work would conform with their intentions regarding re-planning and other public interests. The condition laid down regarding notification will be strictly enforced, and the carrying out of any work at all in the named areas, without prior notification to the Commission, will render the person doing such work liable to forfeit the right to repayment by the Commission. The powers conferred upon the Commission by the Act are exercisable only in direct relation to war damage.

COUNTY COURTS, GLOUCESTERSHIRE.

I, John Viscount Simon, Lord High Chancellor of Great Britain, by virtue of the County Courts Act, 1934, and of all other powers enabling me in this behalf Do hereby Order as follows:—

On and after the fifth day of April, 1943, the several Judges mentioned in the first column of the Schedule hereto shall be the Judges of the Districts of the several County Courts set opposite to their names respectively in the second column of the said Schedule in addition to the Districts of which they are now the Judges respectively.

Dated the Second day of April, 1943. *Simon*, C.

SCHEDULE.

His Honour Judge Roope Reeve, K.C. ..	Ross.
His Honour Judge Wethered	Gloucester. Newent. Newnham. Thornbury.
His Honour Judge Jenkins, K.C. ..	Cirencester. Dursley. Stroud.
His Honour Judge Hurst	Cheltenham. Northleach. Tewkesbury.
His Honour Judge Finnemore	Alcester. Redditch.
His Honour Judge Forbes	Stow-on-the-Wold. Stratford-on-Avon. Warwick.

Wills and Bequests.

Mr. John Vernon Thomas Lander, of Wellington, Salop, solicitor and farmer, Coroner for Wellington and district for fifty-two years, left £26,232, with net personalty nil.

Mr. Robert Frederick Ripley, solicitor, of Throgmorton Avenue, E.C., left £7,776, with net personalty £6,541.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

Hilary Sittings, 1943.

Rota of Registrars in attendance on

Date.			Emergency Rota.	Appeal Court I.	Mr. Justice Farwell
Monday,	Apr.	12	Mr. Hay	Mr. Blaker	Mr. Andrews
Tuesday,	,,	13	Reader	Andrews	Jones
Wednesday,	,,	14	Blaker	Jones	Hay
Thursday,	,,	15	Andrews	Hay	Reader
Friday,	,,	16	Jones	Reader	Blaker
Saturday,	,,	17	Hay	Blaker	Andrews

Date			Group A. Mr. Justice Bennett *Non-Witness*	Group A. Mr. Justice Simonds *Witness*	Group B. Mr. Justice Morton *Witness*	Group B. Mr. Justice Uthwatt *Non-Witness*
Monday,	Apr.	12	Mr. Reader	Mr. Blaker	Mr. Hay	Mr. Jones
Tuesday,	,,	13	Blaker	Andrews	Reader	Hay
Wednesday,	,,	14	Andrews	Jones	Blaker	Reader
Thursday,	,,	15	Jones	Hay	Andrews	Blaker
Friday,	,,	16	Hay	Reader	Jones	Andrews
Saturday,	,,	17	Reader	Blaker	Hay	Jones

to remove the control. With regard to the comments of Mr. Justice SINGLETON, the Minister pointed out that they were made in the absence of evidence on behalf of the Minister, and, as the learned judge clearly stated, were outside his province in the case. In the course of subsequent questions, Sir JOHN MELLOR asked if the Minister's action was not entirely contrary to the intention of the regulation, even if it were within its legal limits. The Minister replied that it was not, as the purpose of

Services and partial absence of mothers and elder sisters and brothers on war service. The remedies, if any, lie with education committees and probation officers, who have already done much, and will have to continue their praiseworthy efforts to stand *in loco parentium*.

War Damage to Highways.

THE new War Damage (Highways) Scheme, made under s. 41

Re Anglo-International Bank, Ltd.

I.—Communications with Enemies.

In *Re Anglo-International Bank, Ltd.* (*The Times*, 23rd March, 1943), Bennett, J., had to consider a petition for reduction of capital. The resolution to reduce capital had been passed by the necessary majority at a meeting otherwise validly convened, but the learned judge held it ineffective because no committing such an offence. If it would be an offence to post to an enemy a letter about a matter of business (or any other matter) the defendant would not escape by saying that the letter was intercepted by the authorities and did not reach the enemy; the mere posting of it would surely be an "attempt," however unsuccessful, to commit the offence.

Again, by Defence Reg. 4A, it is provided that "no person shall communicate with any person in enemy territory." It is submitted that it is an offence under this regulation to dispatch